IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
THURSDAY, THE TWENTY FOURTH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE SRI JUSTICE A.GOPAL REDDY
WRIT PETITION NO : 1531 of 2003

Between:
N. Siva Prasad Reddy, S/o M. Subba Reddy,
Door.No.7/347-9, RTC Bus Stand,
Kadapa Town, Kadapa Dist.

..... PETITIONER

AND

1 The commissioner Of Prohibition & Excise,
Andhra Pradesh, Hyderabad.
2 The Prohibition & Excise Superintendent,
Kadapa, Kadapa Dist.
3 The Prohibition & Excise Inspector,
Kadapa, Kadapa Dist.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 3rd respondent in issuing notice in RC.No.1/I.L/2002, dated 23-12-02 demanding to pay a sum of Rs.71,000/- and the consequential action of the 2nd respondent in issuing show cause notice in RC.No.C1/758/2002, dated 21-1-03 demanding to pay a sum of Rs.71,000/- and threatening to cancel the licence granted and renewed in favour of the petitioner as arbitrary, illegal, discriminatory, highhanded and contrary to the Rule 38 & 39 of Andhra Pradesh India Liquor and Foreign Liquor Rule 1970 and Rule 34 (2) of the A.P. Excise (Indian & Foreign Liquor Retail sale Conditions of Licence) Rules, 1993 apart from being violative of the fundamental rights guaranted to the petitioner under Article 14 & 19(1) (g) of the Constitution of India for the facts and consequently direct the respondents not to insist the payment of Rs.71,000/- @ 10% of licence fee).

For the Petitioner: MR.V.R.REDDY KOVVURI, Advocate

For the Respondent No.1 to 3: Asst. GP FOR PROHIBITION & EXCISE

The Court made the following Order :

Questioning the proceedings in R.C.No.1/I.L/2002, dated 23-12-2002 demanding to pay a sum of Rs.71,000/- and the consequential action of the 2nd respondent in issuing show cause notice in R.C.No.C1/758/2002, dated 21-01-2003, the present writ petition has been filed.

The brief facts of the case in nutshell are as follows: The petitioner herein was granted I.L. 24 licence under licence No.42 for the Excise Year 1998-99. It is stated that due to some financial difficulties, the petitioner made an application to the 3rd respondent herein, seeking permission to include Mr.I.Madhava Reddy as partner who in turn recommended the same to the second respondent. Basing on such recommendations, the petitioner was called upon to pay a sum of Rs.1000/- as per Rule 34 (2) of the A.P. Excise (Indian and Foreign Liquor Retail Sale Conditions of licences) Rules, 1993 for inclusion of another person as partner. On payment of the said amount, the 2nd respondent permitted the petitioner to include the said person as partner through his proceedings in Rc.No.c/2196/2000, dated 26-04-2000. After lapse of 2 ½ years, the 3rd respondent herein issued a notice in R.C.No.1/I.L/2002, dated 23-12-2002 demanding the petitioner to pay a sum of Rs.71,000/- stating that the Auditor raised an objection that as per Rule 38 of A.P. Indian Liquor and Foreign Liquor Rules, 1970, whenever the character of the licensed entity changes due to the proposed inclusion/exclusion of partners, it is said to be the “Transfer” of licence and it must be sent to the Commissioner of Prohibition and Excise for approval. In such case, the fee would be 10% of the license fee

chargeable under Rule 38 (2) of A.P. Indian Liquor & Foreign Liquor Rules, 1970. Accordingly, the petitioner was called upon to pay the sum of Rs.71,000/- towards 10% of the licence fee. The petitioner submitted his explanation stating that the instructions issued by the Commissioner, dated 8-9-2000 were after the inclusion of the partner and the petitioner was never informed by the respondents about the payment of 10% of the licence fee. Being not satisfied with the explanation offered by the petitioner, the 3rd respondent issued the impugned notice dated 23-12-2002 to the petitioner, which is the subject matter of challenge in the present writ petition.

Opposing the writ petition, second respondent filed a counter stating that the petitioner made an application for inclusion of one I.Madhava Reddy as a partner. The Second respondent issued orders permitting the petitioner for inclusion of the name of I.Madhava Reddy as partner in proceedings in R.C.No.C/2196/2000 dated 26-4-2004. But as per sub Rule (4) and (5) of the Rule 38 of A.P. Indian Liquor & Foreign Liquor Rules, 1970 when conversion of a proprietor concern into a firm or a company or a firm into a company and vice versa shall amount to transfer of licence and the petitioner cannot take advantage of the mistake and escape from the liability under rules.

The learned counsel for the petitioner contends that inclusion of a partner to the business does not amount to transfer and the petitioner was never informed about the liability to pay 10% of the licence fee for such transfer unless there is a sanction of the Commissioner to transfer the licence from proprietory concern to partnership which will not amount to transfer under Rule 38(1) of the Act. In view of the same, calling upon the petitioner to pay the licence fee is arbitrary and illegal.

The learned Assistant Government Pleader for Excise appearing on behalf of the respondents contends that the second respondent by mistake permitted the petitioner for inclusion of the partner which amounts

to transfer of licence from proprietory concern to partnership firm. Hence, the petitioner is liable to pay 10% of the licence fee.

It is not in dispute that the transfer licence can be granted as per the rules 38 of the A.P. Indian Liquor & Foreign Liquor Rules, 1970 which reads as follows:

> (1) No licensee shall except with the sanction of the Commissioner transfer his licence to any other person. The Commissioner may allow such transfer of licence on payment of the prescribed fee and on production of a certificate to the effect that no cases involving contravention of Excise Act and Rules framed there under are pending against him and also on production of Sales Tax and Income Tax Clearance Certificates.
>
> Provided that instead of permitting a licence to be transferred, the Commissioner may require the transferee to take out a fresh licence on payment of fees.
>
> (2) The fee payable by any licensee for the privilege of having the transfer of his licence to any other person shall be 10% of the fee chargeable for grant or renewal or continuance of such licence.
>
> (3) Mere change in the name by keeping the entity intact does not amount to transfer of licence. In such cases the Commissioner may allow change in the (trade) name subject to payment of fee of rupees (thousand only) and on production of Certificates referred to in sub-rule (1) above.
>
> (4) When there are only two partners in the firm holding the licence and one of them withdraw or expires, the entity of the firm is changed from partnership to proprietory. It amounts to transfer of licence.
>
> (5) Conversion of proprietory concern into a firm or a company or a firm into a company and *vice versa* shall amount to transfer of licence.

A plain reading of the above rule clearly indicates that no licensee shall except with the sanction of the Commissioner transfer his licence to any other person and the Commissioner may allow such transfer of licence on payment of the prescribed fee and on complying other conditions mentioned in sub-Rule (1) of Rule 38. The fee payable by any

licensee for the privilege of having the transfer of his licence to any other person shall be 10% of the fee chargeable for grant or renewal or continuance of such licence. Mere change in the name by keeping the entity intact does not amount to transfer of licence. In such cases the Commissioner may allow change in the name subject to payment of fee of rupees one thousand only and on production of Certificates referred to in sub-rule (1). When there are only two partners in the firm holding the licence and one of them withdraw or expires, the entity of the firm is changed from partnership to proprietary and it amounts to transfer of licence, and no permission is required. Similarly sub-Rule (5) clearly emphasizes conversion of proprietary concern into a firm or a company or a firm into a company and vice versa shall amount to transfer of licence and no where it indicates that the same should be with the sanction of Commissioner. Whereas sub-rule (1) prohibits such transfer of licence to any other person without previous permission of the Commissioner. Cases governed under sub-rules (4) and (5) do not require any such permission of the Commissioner. The moment the partner has withdrawn from the firm holding licence or expires, the entity of the partnership changes into proprietary concern and the same amounts to transfer. Likewise, any proprietary concern is converted into a firm by intaking a partner the same amounts to transfer under sub-rule (5).

In the present case, the petitioner sought permission from the licensing authority for inclusion of a partner into his business, which was permitted by the licensing authority. In such case sub-rule (5) of Rule 38 will come into operation, namely, if proprietary concern is changed into partnership it will amount to transfer of licence and on such transfer the licensee has to pay 10% of the fee chargeable under sub-rule (2).

In view of the same, the impugned notice issued by the third respondent calling upon the petitioner to pay 10% of the licence fee as inclusion of a partner amounts to transfer do not suffer from any manifest

illegality or legal infirmities. I see no grounds to allow the writ petition.

The writ petition is dismissed accordingly. No costs.

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24-6-2004

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To

1 The commissioner Of Prohibition & Excise,
Andhra Pradesh, Hyderabad.
2 The Prohibition & Excise Superintendent,
Kadapa, Kadapa Dist.
3 The Prohibition & Excise Inspector,
Kadapa, Kadapa Dist.
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